

HOUSE BILL No. 1545

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-48-4-14.5; IC 35-50.

Synopsis: Sentencing for methamphetamine offenses. Makes possessing: (1) more than ten grams of ephedrine, pseudoephedrine, or phenylpropanolamine, pure or adulterated; or (2) anhydrous ammonia or ammonia solution with the intent to manufacture methamphetamine or amphetamine; Class C felonies instead of Class D felonies. Allows a court to suspend only that part of a sentence that is in excess of the minimum sentence imposed on a person convicted of: (1) dealing in methamphetamine; (2) possessing more than ten grams of ephedrine, pseudoephedrine, or phenylpropanolamine; and (3) possessing anhydrous ammonia or ammonia solution with the intent to manufacture methamphetamine or amphetamine. Provides that when a person convicted of dealing in methamphetamine, possessing more than ten grams of ephedrine, pseudoephedrine, or phenylpropanolamine, or possessing anhydrous ammonia or ammonia solution with the intent to manufacture methamphetamine or amphetamine completes the person's fixed term of imprisonment, less credit time earned with respect to that term, the person shall be placed on parole: (1) until a date not more than 24 months from the date the person is placed on parole, as determined by the parole board; or (2) until the date the person's fixed term of imprisonment expires; whichever is later.

Effective: July 1, 2009.

Yarde, Dembowski, Clere

January 16, 2009, read first time and referred to Committee on Rules and Legislative Procedures.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1545

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-48-4-14.5, AS AMENDED BY P.L.151-2006,
2 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 14.5. (a) As used in this section, "chemical
4 reagents or precursors" refers to one (1) or more of the following:
5 (1) Ephedrine.
6 (2) Pseudoephedrine.
7 (3) Phenylpropanolamine.
8 (4) The salts, isomers, and salts of isomers of a substance
9 identified in subdivisions (1) through (3).
10 (5) Anhydrous ammonia or ammonia solution (as defined in
11 IC 22-11-20-1).
12 (6) Organic solvents.
13 (7) Hydrochloric acid.
14 (8) Lithium metal.
15 (9) Sodium metal.
16 (10) Ether.
17 (11) Sulfuric acid.

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- 1 (12) Red phosphorous.
- 2 (13) Iodine.
- 3 (14) Sodium hydroxide (lye).
- 4 (15) Potassium dichromate.
- 5 (16) Sodium dichromate.
- 6 (17) Potassium permanganate.
- 7 (18) Chromium trioxide.
- 8 (19) Benzyl cyanide.
- 9 (20) Phenylacetic acid and its esters or salts.
- 10 (21) Piperidine and its salts.
- 11 (22) Methylamine and its salts.
- 12 (23) Isosafrole.
- 13 (24) Safrole.
- 14 (25) Piperonal.
- 15 (26) Hydriodic acid.
- 16 (27) Benzaldehyde.
- 17 (28) Nitroethane.
- 18 (29) Gamma-butyrolactone.
- 19 (30) White phosphorus.
- 20 (31) Hypophosphorous acid and its salts.
- 21 (32) Acetic anhydride.
- 22 (33) Benzyl chloride.
- 23 (34) Ammonium nitrate.
- 24 (35) Ammonium sulfate.
- 25 (36) Hydrogen peroxide.
- 26 (37) Thionyl chloride.
- 27 (38) Ethyl acetate.
- 28 (39) Pseudoephedrine hydrochloride.
- 29 (b) A person who possesses more than ten (10) grams of ephedrine,
- 30 pseudoephedrine, or phenylpropanolamine, pure or adulterated,
- 31 commits a ~~Class D felony. However, the offense is~~ a Class C felony. if
- 32 ~~the person possessed:~~
- 33 ~~(1) a firearm while possessing more than ten (10) grams of~~
- 34 ~~ephedrine, pseudoephedrine, or phenylpropanolamine, pure or~~
- 35 ~~adulterated; or~~
- 36 ~~(2) more than ten (10) grams of ephedrine, pseudoephedrine, or~~
- 37 ~~phenylpropanolamine, pure or adulterated, in, on, or within one~~
- 38 ~~thousand (1,000) feet of:~~
- 39 ~~(A) school property;~~
- 40 ~~(B) a public park;~~
- 41 ~~(C) a family housing complex; or~~
- 42 ~~(D) a youth program center.~~

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(c) A person who possesses anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with the intent to manufacture methamphetamine or amphetamine, schedule II controlled substances under IC 35-48-2-6, commits a Class D felony. However, the offense is a Class C felony, if the person possessed:

(1) a firearm while possessing anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine or amphetamine, schedule II controlled substances under IC 35-48-2-6; or

(2) anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine or amphetamine, schedule II controlled substances under IC 35-48-2-6, in, on, or within one thousand (1,000) feet of:

(A) school property;

(B) a public park;

(C) a family housing complex; or

(D) a youth program center.

(d) Subsection (b) does not apply to a:

(1) licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier or an agent of any of these persons if the possession is in the regular course of lawful business activities; or

(2) person who possesses more than ten (10) grams of a substance described in subsection (b) if the substance is possessed under circumstances consistent with typical medicinal or household use, including:

(A) the location in which the substance is stored;

(B) the possession of the substance in a variety of:

(i) strengths;

(ii) brands; or

(iii) types; or

(C) the possession of the substance:

(i) with different expiration dates; or

(ii) in forms used for different purposes.

(e) A person who possesses two (2) or more chemical reagents or precursors with the intent to manufacture a controlled substance commits a Class D felony.

(f) An offense under subsection (e) is a Class C felony if the person possessed:

(1) a firearm while possessing two (2) or more chemical reagents or precursors with intent to manufacture a controlled substance; or

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(2) two (2) or more chemical reagents or precursors with intent to manufacture a controlled substance in, on, or within one thousand (1,000) feet of:

- (A) school property;
- (B) a public park;
- (C) a family housing complex; or
- (D) a youth program center.

(g) A person who sells, transfers, distributes, or furnishes a chemical reagent or precursor to another person with knowledge or the intent that the recipient will use the chemical reagent or precursors to manufacture a controlled substance commits unlawful sale of a precursor, a Class D felony.

SECTION 2. IC 35-50-2-2, AS AMENDED BY P.L.64-2008, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) Except as provided in subsection (i), with respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.7:

(1) The crime committed was a Class A felony or Class B felony and the person has a prior unrelated felony conviction.

(2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.

(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

- (A) murder (IC 35-42-1-1);
- (B) battery (IC 35-42-2-1) with a deadly weapon or battery

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- 1 causing death;
- 2 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- 3 (D) kidnapping (IC 35-42-3-2);
- 4 (E) confinement (IC 35-42-3-3) with a deadly weapon;
- 5 (F) rape (IC 35-42-4-1) as a Class A felony;
- 6 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
- 7 felony;
- 8 (H) except as provided in subsection (i), child molesting (IC
- 9 35-42-4-3) as a Class A or Class B felony, unless:
- 10 (i) the felony committed was child molesting as a Class B
- 11 felony;
- 12 (ii) the victim was not less than twelve (12) years old at the
- 13 time the offense was committed;
- 14 (iii) the person is not more than four (4) years older than the
- 15 victim, or more than five (5) years older than the victim if
- 16 the relationship between the person and the victim was a
- 17 dating relationship or an ongoing personal relationship (not
- 18 including a family relationship);
- 19 (iv) the person did not have a position of authority or
- 20 substantial influence over the victim; and
- 21 (v) the person has not committed another sex offense (as
- 22 defined in IC 11-8-8-5.2) (including a delinquent act that
- 23 would be a sex offense if committed by an adult) against any
- 24 other person;
- 25 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
- 26 with a deadly weapon;
- 27 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
- 28 injury;
- 29 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
- 30 or with a deadly weapon;
- 31 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
- 32 weapon;
- 33 (M) escape (IC 35-44-3-5) with a deadly weapon;
- 34 (N) rioting (IC 35-45-1-2) with a deadly weapon;
- 35 (O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) if the
- 36 court finds the person possessed a firearm (as defined in
- 37 IC 35-47-1-5) at the time of the offense, or the person
- 38 delivered or intended to deliver to a person under eighteen
- 39 (18) years of age at least three (3) years junior to the person
- 40 and was on a school bus or within one thousand (1,000) feet
- 41 of:
- 42 (i) school property;

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- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(P) dealing in methamphetamine (IC 35-48-4-1.1), if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense; or the person delivered or intended to deliver the methamphetamine pure or adulterated to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center; **possessing more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, pure or adulterated (IC 35-48-4-14.5(b)), or possessing anhydrous ammonia or ammonia solution with the intent to manufacture methamphetamine or amphetamine, schedule II controlled substances (IC 35-48-4-14.5(c));**

(Q) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(R) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5;

(S) an offense under IC 9-30-5-5(b) (operating a vehicle while intoxicated causing death);

(T) aggravated battery (IC 35-42-2-1.5); or

(U) disarming a law enforcement officer (IC 35-44-3-3.5).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that

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the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of the sentence of a sex or violent offender (as defined in IC 11-8-8-5) that is suspendible under subsection (b), the court shall place the sex or violent offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) or IC 35-48-4-6.1(b)(1)(B) may not be suspended.

(i) If a person is:

(1) convicted of child molesting (IC 35-42-4-3) as a Class A felony against a victim less than twelve (12) years of age; and

(2) at least twenty-one (21) years of age;

the court may suspend only that part of the sentence that is in excess of thirty (30) years.

SECTION 3. IC 35-50-6-1, AS AMENDED BY P.L.216-2007, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Except as provided in subsection (d), ~~or~~ (e), **or (j)**, when a person imprisoned for a felony completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to that term, the person shall be:

(1) released on parole for not more than twenty-four (24) months, as determined by the parole board;

(2) discharged upon a finding by the committing court that the person was assigned to a community transition program and may be discharged without the requirement of parole; or

(3) released to the committing court if the sentence included a period of probation.

(b) This subsection does not apply to a person described in subsection (d), (e), ~~or~~ (f), **or (j)**. A person released on parole remains on parole from the date of release until the person's fixed term expires, unless the person's parole is revoked or the person is discharged from that term by the parole board. In any event, if the person's parole is not revoked, the parole board shall discharge the person after the period set

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under subsection (a) or the expiration of the person's fixed term, whichever is shorter.

(c) A person whose parole is revoked shall be imprisoned for all or part of the remainder of the person's fixed term. However, the person shall again be released on parole when the person completes that remainder, less the credit time the person has earned since the revocation. The parole board may reinstate the person on parole at any time after the revocation.

(d) This subsection does not apply to a person who is a sexually violent predator under IC 35-38-1-7.5. When a sex offender (as defined in IC 11-8-8-4.5) completes the sex offender's fixed term of imprisonment, less credit time earned with respect to that term, the sex offender shall be placed on parole for not more than ten (10) years.

(e) This subsection applies to a person who:

- (1) is a sexually violent predator under IC 35-38-1-7.5;
- (2) has been convicted of murder (IC 35-42-1-1); or
- (3) has been convicted of voluntary manslaughter (IC 35-42-1-3).

When a person described in this subsection completes the person's fixed term of imprisonment, less credit time earned with respect to that term, the person shall be placed on parole for the remainder of the person's life.

(f) This subsection applies to a parolee in another jurisdiction who is a person described in subsection (e) and whose parole supervision is transferred to Indiana from another jurisdiction. In accordance with IC 11-13-4-1(2) (Interstate Compact for Out-of-State Probationers and Parolees) and rules adopted under Article VII (d)(8) of the Interstate Compact for Adult Offender Supervision (IC 11-13-4.5), a parolee who is a person described in subsection (e) and whose parole supervision is transferred to Indiana is subject to the same conditions of parole as a person described in subsection (e) who was convicted in Indiana, including:

- (1) lifetime parole (as described in subsection (e)); and
- (2) the requirement that the person wear a monitoring device (as described in IC 35-38-2.5-3) that can transmit information twenty-four (24) hours each day regarding a person's precise location, if applicable.

(g) If a person being supervised on lifetime parole as described in subsection (e) is also required to be supervised by a court, a probation department, a community corrections program, a community transition program, or another similar program upon the person's release from imprisonment, the parole board may:

- (1) supervise the person while the person is being supervised by

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the other supervising agency; or

(2) permit the other supervising agency to exercise all or part of the parole board's supervisory responsibility during the period in which the other supervising agency is required to supervise the person, if supervision by the other supervising agency will be, in the opinion of the parole board:

(A) at least as stringent; and

(B) at least as effective;

as supervision by the parole board.

(h) The parole board is not required to supervise a person on lifetime parole during any period in which the person is imprisoned. However, upon the person's release from imprisonment, the parole board shall recommence its supervision of a person on lifetime parole.

(i) If a court orders the parole board to place a sexually violent predator whose sentence does not include a commitment to the department of correction on lifetime parole under IC 35-38-1-29, the parole board shall place the sexually violent predator on lifetime parole and supervise the person in the same manner in which the parole board supervises a sexually violent predator on lifetime parole whose sentence includes a commitment to the department of correction.

(j) This subsection applies to a person convicted of dealing in methamphetamine (IC 35-48-4-1.1), possessing more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, pure or adulterated (IC 35-48-4-14.5(b)), or possessing anhydrous ammonia or ammonia solution with the intent to manufacture methamphetamine or amphetamine, schedule II controlled substances (IC 35-48-4-14.5(c)). When a person described in this subsection completes the person's fixed term of imprisonment, less credit time earned with respect to that term, the person shall be placed on parole:

(1) until a date not more than twenty-four (24) months after the date the person is placed on parole, as determined by the parole board; or

(2) until the date the person's fixed term of imprisonment expires;

whichever is later, unless the person's parole is revoked.

SECTION 4. [EFFECTIVE JULY 1, 2009] IC 35-48-4-14.5, IC 35-50-2-2, and IC 35-50-6-1, all as amended by this act, apply only to crimes committed after June 30, 2009.

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